

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SEYBURN, KAHN, GINN, BESS,  
DIETCH and SERLIN, P.C.,

Plaintiff-Appellant,

v

KIRIT BAKSHI,

Defendant-Appellee.

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UNPUBLISHED  
March 13, 2003

No. 238697  
Oakland Circuit Court  
LC No. 99-018126-CK

Before: Kelly, P.J. and White and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Defendant retained plaintiff to represent him and his business interests in a variety of matters. Plaintiff sent monthly billings and defendant paid for plaintiff's services until November 1992. Plaintiff continued to provide legal services but in April 1993 began the process of moving to withdraw as defendant's attorneys. The order permitting plaintiff's withdrawal was entered on September 30, 1993. On November 11, 1993 plaintiff billed defendant for legal services rendered in the month of October, 1993. These services were essentially housekeeping matters in order to close the file and identify what items were be returned to defendant. The due date for payment was November 23, 1993. Defendant did not pay this bill.

In 1995, defendant sued plaintiff for legal malpractice. Plaintiff sought dismissal of the action based upon the statute of limitations. MCR 2.116(C)(7). The trial court in the malpractice action refused to dismiss the claim on that basis, finding that plaintiff had last rendered services to defendant on October 12, 1993.<sup>1</sup>

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<sup>1</sup> Ultimately the malpractice suit was dismissed pursuant to MCR 2.116(C)(10).

On October 8, 1999, plaintiff filed suit alleging that defendant breached the contract to pay for legal services rendered. Plaintiff sought \$62,763.49 in unpaid legal fees, plus costs and attorney fees. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that because the alleged breach of contract occurred in November 1992 when defendant ceased paying plaintiff, plaintiff's claim was barred by the six-year statutory period of limitation applicable to breach of contract claims. MCL 600.5807(8). Defendant also asserted that plaintiff's billings for activities after March 1993 were not billings on an open account, but rather, were solely for plaintiff's own benefit. In response, plaintiff noted that because the trial court in the malpractice action found that the law firm last rendered legal services to defendant on October 12, 1993, that determination controlled in the instant matter.

The trial court held a hearing and granted defendant's motion for summary disposition. The trial court found that it was undisputed that defendant ceased making payments to plaintiff in November 1992, and that that act constituted a breach of contract. The court concluded that because plaintiff's suit was not filed until October 1999, it was barred by the six-year limitation period.

## II. Standard of Review and Applicable Law

We review a trial court's decision on a motion for summary disposition de novo. *Smith v YMCA*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

The statutory period of limitation for a breach of contract action is six years. MCL 600.5807(8). A claim for breach of contract accrues when the promisor fails to perform under the contract. *HJ Tucker & Assocs, Inc v Allied Chucker & Eng'g Co*, 234 Mich App 550, 562; 595 NW2d 176 (1999).

## III. Analysis

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We agree and reverse the trial court's decision. Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid, final judgment, and the issue was actually and necessarily determined in that prior proceeding. *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 33; 620 NW2d 657 (2000).

Here, in a prior proceeding between these parties and their privies in which defendant sued plaintiff for legal malpractice, the issue of the date on which plaintiff last performed legal services for defendant was actually and necessarily litigated in order to determine if certain claims were barred by the two-year limitation period applicable to legal malpractice actions. MCL 600.5805(5). In its decision the trial court found that plaintiff last furnished legal services to defendant in October 1993, and that certain claims were therefore time barred. Another panel of this Court affirmed the trial court's decision.<sup>2</sup> Thus, the doctrine of collateral estoppel precludes relitigation of this issue in the instant case. *Minicuci, supra*.

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<sup>2</sup> *Bakshi v Gold*, unpublished opinion per curiam of the Court of Appeals, issued August 10, (continued...)

Defendant breached his contract with plaintiff when he failed to pay within thirty days after plaintiff last rendered services. *Tucker, supra*. Plaintiff last furnished legal services to defendant on October 12, 1993. Plaintiff filed suit within six years of defendant's breach of contract. The claim was not time barred and summary disposition was improperly granted.

Reversed.

/s/ Kirsten Frank Kelly  
/s/ Joel P. Hoekstra

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(...continued)

2001 (Docket No. 220867).